

STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUAN R. VICENTE, et al.,

Plaintiffs,

-against-

LJUBICA CONTRACTORS LLC and PREDRAG  
JANKOVIC,

Defendants.

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18-CV-419 (VSB) (OTW)

**ORDER**

**ONA T. WANG, United States Magistrate Judge:**

The Court has reviewed Plaintiffs' papers in support of sanctions against Defendants and Defendants' former counsel John P. DeMaio (ECF 72 and 73), Defendants' Oppositions (ECF 76 and 78), and Plaintiffs' Reply (ECF 79).

On May 16, 2019, I sanctioned Defendants and Mr. DeMaio under Fed. R. Civ. P. 16(f), ordering them to pay \$3,678.28 to Plaintiffs' counsel within 45 days of the Order. (ECF 44). I ordered those sanctions because Mr. DeMaio failed to appear for three scheduled court conferences, and failed to comply with several pretrial orders, resulting in the case coming to a standstill. I found that Mr. DeMaio had not demonstrated any substantial justification for those violations, and that sanctions were therefore warranted. (ECF 44). To date, neither Defendants nor Mr. DeMaio has complied with the sanctions order.

Since that Order, Defendants have obtained new counsel, and have represented that they "were completely unaware of and were kept in the dark by their initial counsel, as to the procedural developments and various Orders of this Court" issued in the action. (ECF 63). The

Court declines to award sanctions against Defendants and their current counsel for their former counsel's misconduct. *See Martinez v. New York City Health & Hosps. Corp.*, No. 15-CV-515 (ALC) (GWG), 2017 WL 6729296, at \*5 (S.D.N.Y. Dec. 28, 2017) (declining to award sanctions against party where party was unaware of attorney's misconduct, and awarding sanctions against attorney personally). The Court finds that it was not unreasonable for Defendants to trust that Mr. DeMaio, an admitted attorney, would take full responsibility for compliance with court orders and other obligations. Accordingly, ECF 44 is hereby modified so as to apply only to Mr. DeMaio in his personal capacity.

For the reasons stated, no sanction will issue against Defendants or their current counsel. **Mr. DeMaio is ORDERED to pay \$3,678.28 to Plaintiffs' counsel by December 23, 2022,** and file proof of payment with the Court. Plaintiffs' counsel is directed to serve a copy of this Order on Mr. DeMaio and to file proof of service by December 9, 2022.

The Clerk of Court is respectfully directed to close ECF 72.

**SO ORDERED.**

Dated: December 5, 2022  
New York, New York

s/ Ona T. Wang  
**Ona T. Wang**  
United States Magistrate Judge